

BOARD OF APPEALS CASE NO. 4817

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BEFORE THE

APPLICANT: Grace Hiter

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ZONING HEARING EXAMINER

REQUEST: Appeal of Zoning Administrator's decision regarding Section 267-7(E)

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OF HARFORD COUNTY

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Advertised

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Aegis: 5/13/98 & 5/20/98

Record: 5/15/98 & 5/22/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Grace Hiter, is seeking an appeal of an administrative decision pursuant to Section 267-7(E) of the Zoning Code.

On January 28, 1998, the Applicant wrote a letter to Arden Holdredge, the Director of Planning and Zoning wherein the Applicant sought a "...determination of the basis, if any, under which zoning reclassification applications can legally proceed prior to a referendum vote, and a determination as to who is responsible for the coordinated enforcement of the Code and Charter provisions as they relate to the laws on referendum and the overall reclassification process." This letter was apparently forwarded to Nancy Levy Giorno, Esquire, attorney for the Department who rendered a legal opinion in the form of a letter on February 2, 1998. Initially, upon receipt of the letter from Ms. Giorno, the Applicant attempted to file an appeal pursuant to Section 267-7(E). The Department of Planning and Zoning initially refused the appeal on the basis that a letter from the County Law Department did not constitute a decision of the Zoning Administrator and was, therefore, not appealable. Despite this position, the Department of Planning and Zoning ultimately relented and allowed the Applicant to file the instant appeal on March 10, 1998.

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The Applicant presents two issues on appeal:

- 1. Can the Board legally accept zoning reclassifications in light of the pending referendum?**
- 2. Whether the February 2, 1998 legal opinion of Nancy Levy Giorno is a decision/interpretation of the Zoning Administrator as provided in Section 267-7 of the Harford County Zoning Code.**

The second question must be answered first before the Hearing Examiner need respond to the substantive question presented by the Applicant. Harford County correctly points out that not every decision of the Zoning Administrator is appealable. Only those decisions rendered in the capacity of Zoning Administrator are appealable to the Board. The duties of the Zoning Administrator are set forth in Section 267-7(B) of the Code which states:

“The Zoning Administrator or his duly authorized designee shall be vested and charged with the power and duty to:

- (1) Receive and review complete applications under the provisions of this Part 1 for transmittal and recommendation to the Board.**
- (2) Issue zoning certificates pursuant to the provisions of this Part 1 and suspend or revoke any zoning certificate upon violation of any of the provisions of this Part 1 or any approvals granted hereunder subject to the requirements of this Part 1.**
- (3) Conduct inspections and surveys to determine whether a violation of this Part 1 exists.**
- (4) Seek criminal or civil enforcement for any provision of this Part 1 and take any action on behalf of the county, either at law or in equity, to prevent or abate any violation or potential violation of this Part 1.**
- (5) Render interpretations upon written request of an interested person whose property may be affected as to the applicability of this Part 1 to particular uses and its application to the factual circumstances presented.**

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(a) Within 14 calendar days after a request for an interpretation is received, the Zoning Administrator shall:

[1] Ensure that a notice of the request is sent by first class mail to each owner of property which adjoins the property involved;

[2] Ensure that the property that is the subject of the request is posted conspicuously with a notice stating the Department's telephone number, that the request has been received, the date by which the interpretation must be issued, and that further information may be obtained from the Department.

(b) The Zoning Administrator shall issue an interpretation within 60 calendar days after receiving the request for the interpretation. Within 5 calendar days after issuing the interpretation, the Zoning Administrator shall send a copy of the interpretation to each owner of property which adjoins the property involved, and shall include a notice that the interpretation may be appealed in accordance with Subsection E of this section.

(6) Design and distribute applications and forms required by this Part 1, requesting information which is pertinent to the requested approval.

(7) Perform such duties as are necessary for the proper enforcement and administration of this Part 1."

In this case, the Applicant is clearly not seeking an opinion regarding a "particular use" but is asking very general questions which require a legal opinion. Whether, in general, zoning reclassification applications may or may not be accepted pending referendum, is not a question that can be answered by the Zoning Administrator as those duties are set forth in the Code. These are clearly questions requiring legal interpretations that fall outside of the scope of duties of the Zoning Administrator.

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Judge Whitfill, in Brackins v. Harford County, Misc. Case No. 1891 (1995), Circuit Court for Harford County, had the opportunity to address a similar request. In that case, Judge Whitfill opined,

“The Zoning Administrator is the zoning enforcement officer who reviews applications for zoning certificates, issues zoning certificates, initiates suspension and revocation of zoning certificates where appropriate, conducts inspections to determine whether or not violations exist, seeks criminal or civil enforcement of the zoning regulations and renders interpretations upon written request of an interested person whose property may be affected.”

The legal opinion rendered by the County Law Department is not, in the opinion of the Hearing Examiner, a decision/interpretation of the Zoning Administrator (or her designee) that is appealable pursuant to Section 267-7(E). On this basis alone the appeal should be dismissed.

However, the substantive issue raised by the Applicant is one that has been heard on numerous occasions and in each instance, the conclusion has been consistent that applications may be accepted for zoning reclassifications pending referendum on the comprehensive zoning legislation. As the Hearing Examiner has stated in previous opinions, most notably Case Nos. 073, 074, 075, 082, and 094 among others, the “period of review” contemplated by Section 267-13 ended with the passage of Bill 97-55 by the County Council. The Zoning Code anticipates that there will be either comprehensive zoning or piecemeal zoning available to landowners at all times. Had the Council determined that the period of review was extended until the election and the results of the referendum were known, it would have adopted Bill 97-79, introduced by Councilwoman Heselton, which would have suspended the acceptance of further applications for piecemeal rezonings until after the referendum vote. This the Council declined to do. Moreover, Case 075 presented this very question to the Hearing Examiner and that case has become final, no appeal ever having been taken.

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Despite these numerous decisions, all holding that piecemeal rezoning applications may be accepted pending referendum, the Applicant, by merely asking the question again, seeks yet another forum in which to be heard on the same issue. In National Institutes of Health Federal Credit Union Bank v. Hawk, 47 Md. App. 189, 195-96 (1980) cert. Denied. 289 Md. 738 (1981), the Court of Special Appeals in denying an appeal of an administrative decision said:

“If this were not the case, an inequitable, if not chaotic, condition would exist. All that an Applicant would be required to do to preserve a continuing right of appeal would be to maintain a stream of correspondence, dialogue, and requests of the nature pursued by the appellants herein with appropriate departmental authorities even on the most minute issues of contention with the ability to pursue a myriad of appeals ad infinitum.”

Similarly, the Applicant here has interjected herself into numerous cases before the Board to pursue this singular issue and has had her arguments rejected in every case. This is not a question of how a zoning decision may affect the personal or property rights of the Applicant but rather, a general question regarding the impact of referendum on comprehensive zoning, a question undoubtedly beyond the scope of duties allocated to the Zoning Administrator by the Code. Simply because the Applicant has written a letter and asked the question again does not somehow convert the question to an appealable decision/interpretation of the Zoning Administrator.

The Hearing Examiner recommends that the instant appeal be dismissed.

Date OCTOBER 20, 1998

William F. Casey
Zoning Hearing Examiner